

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 2, 2008

No. 06-60874
Summary Calendar

Charles R. Fulbruge III
Clerk

JOHN ANDERSON

Plaintiff-Appellant

v.

GEORGE PAYNE; GASTON RILEY; PHIL TAYLOR; DAMON REESE; T P
WILLIS; PHILLIP COMPTON; MICHAEL NEILL

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:04-CV-542

Before JOLLY, PRADO and SOUTHWICK, Circuit Judges.

PER CURIAM:*

John Anderson, Mississippi prisoner # 279672, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint following a bench trial. Anderson alleged that he was the victim of constitutionally excessive force at the hands of correctional officer Thomas Wills.

We review findings of fact made following a bench trial for clear error and legal conclusions de novo. *Baldwin v. Stalder*, 137 F.3d 836, 839 (5th Cir. 1998).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

A review of the record, including the trial transcript, establishes that the district court's credibility findings are supported by the evidence. Additionally, the evidence supports the conclusion that although Anderson sustained more than a de minimis physical injury, the need for the use of force was legitimate, the threat perceived by Wills was reasonable given Anderson's noncompliance, and Wills adequately tempered the severity of the use of force. See *id.* at 838. Anderson has not shown that the district court's findings on his claims of excessive force were clearly erroneous. See *Canal Barge Co. v. Torco Oil Co.*, 220 F.3d 370, 375 (5th Cir. 2000).

AFFIRMED; MOTION TO EXPEDITE APPEAL DENIED.